No. 95-1315

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In the Supreme Court of the United States

OCTOBER TERM, 1995

GENERAL PUBLIC UTILITIES CORP.,
METROPOLITAN EDISON CO.,
JERSEY CENTRAL POWER & LIGHT CO.,
PENNSYLVANIA ELECTRIC CO.,
BABCOCK & WILCOX CO.,
McDERMOTT INCORPORATED,
RAYTHEON CONSTRUCTORS, INC.,
BURNS & ROE ENTERPRISES, INC.,
DRESSER INDUSTRIES, INC.,

Petitioners,

v.

JONATHAN W. DODSON, *et al.*,

Respondents.

On Petition for a
Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

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QUESTION PRESENTED

Despite the clear meaning of the Price-Anderson Amendments Act of 1988, 42 U.S.C. §2210 et seq., the act's legislative history, and this Court's ruling in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), all of which permit punitive damages for the claims at issue here, should the statute be judicially amended to subvert the policy of Congress?

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STATEMENT OF THE CASE

These actions were begun in the aftermath of the Three Mile Island nuclear facility ("TMI") accident of March 28, 1979.

In these actions Plaintiffs seek punitive damages given Defendants' willful, wanton and reckless indifference to the fact that General Public Utilities Corporation ("GPU") was aware of faulty plant equipment design for significant periods of time prior to the accident and did not take proper steps to alleviate or mitigate the effects of the equipment on the operation of the plant; falsified leak rate tests and reports submitted to the NRC; pleaded no contest to criminally falsifying such data in *United States v. Metropolitan Edison Co.*, CR-83-00188 (M.D.Pa.); and knowingly operated the plant in violation of technical specifications. Following the accident, GPU made numerous false statements denying releases of radiation when the releases were occurring. Such callous behavior, Plaintiffs contend will subject these Defendants to punitive damages.

During the early history of these cases, this Court decided *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984). Plaintiffs recognized that *Silkwood* lent overwhelming authority to Plaintiffs' position that punitive damages were available under the Price-Anderson Act. On February 12, 1985, following motions practice on that issue, the district court held that punitive damages would be recoverable under the Price-Anderson Act to the extent that they would not be paid from federal monies and denied Defendants' motion for partial summary judgment. The district court's order was amended on February 27, 1985 and published as *In re Three Mile Island Litigation*, 605 F.Supp. 778 (M.D.Pa. 1985).

Shortly after the district court's ruling, the Defendants petitioned the Court of Appeals for the Third Circuit for an interlocutory review of the district court's February 27, 1985 Order. In *Kiick v. Metropolitan Edison Co.*, 784 F.2d 490 (3d Cir. 1986), the court of appeals vacated the district court's order finding a lack of federal jurisdiction. Because the Price-Anderson Act provided no basis for federal jurisdiction, the district court remanded the actions back to state court.

The Defendants then lobbied Congress to retroactively create federal jurisdiction. Their accomplishment is embodied

in the Price-Anderson Amendments Act of 1988. 42 U.S.C. §§2014(hh), 2210(n)(2) [hereafter "the Amendments Act"], which became effective on August 20, 1988. Under the Amendments Act, Congress created a federal cause of action: the public liability action, 42 U.S.C. §2014(hh). Defendants were thus entitled to a federal forum and removed these actions to the district court.

Plaintiffs moved to remand the cases for lack of Article III jurisdiction. The district court agreed that Congress failed to confer federal jurisdiction by means of the Amendments Act. *See In re TMI Coordinated Proceedings*, 735 F.Supp. 640 (M.D.Pa. 1990). Defendants appealed the district court's remand order. The court of appeals reversed finding that the Amendments Act was constitutionally sufficient. *See In re TMI Litigation Cases Consolidated II*, 940 F.2d 832, 861 (3d Cir. 1991). This Court declined review of that opinion in *Gumby v. General Public Utilities Corp.*, 503 U.S. 906 (1992).

However, the Defendants' lobbying efforts were not fully accomplished (at least from their perspective) with respect to punitive damages. They did not alter the law of *Silkwood*. While retroactively conferring "arising under" jurisdiction by way of public liability actions over these cases, the Amendments Act was temporally limited, which limitation failed to limit the availablility of punitive damages for these actions.

In fact, the Amendments Act made explicit the availability of punitive damages to these actions, as well as other public liability actions related to nuclear incidents occurring on or after August 20, 1988. *Compare* 42 U.S.C. §2210(s)[1] *with* Note

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[1] 42 U.S.C. §2210(s) provides:

(s) Limitation on punitive damages

No court may award punitive damages in any action with respect to a nuclear incident or precautionary evaluation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

of Effective Date of 1988 Amendment, P.L. 100-408, §20, 102 Stat. 1066, 1084 (1988).[2]

Following the promulgation of the Amendments Act, the Defendants moved for partial summary judgment on Plaintiffs' claims for punitive damages, claiming among other things that Pennsylvania law on punitive damages was inconsistent with the compensatory nature of the Amendments Act. App. at 20a. On February 18, 1994, the district court denied the Defendants' motion for partial summary judgment finding that they failed to meet their burden to show that Congress intended to preclude awards of punitive damages. App. at 20a-26a. Relying on *Silkwood*, *supra*, the district court held that this Court effectively decided the issue under the Price-Anderson Act, as follows:

> Defendants argue in great detail that the award of punitive damages in this case is inconsistent with the overall scheme adopted by Congress in the Price-Anderson Act. However, the Supreme Court addressed essentially this same argument in *Silkwood* and decided that punitive damages were consistent with applicable federal statutes and regulation. In addressing the government's conflict preemption argument, the Supreme Court explicitly found that "exposure to punitive damages [does not] frustrate *any purpose* of the federal remedial scheme." 464 U.S. at 257 (emphasis added). As discussed above, the Court clearly considered the

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[2] The Amendments Act states that the *limitation* on punitive damages only applies to cases subsequent to August 20, 1988, as set forth in the Note of Effective Date of 1988 Amendment:

> Amendment by Pub.L. 100-408 effective Aug. 20, 1988, with the amendment by section 11 of Pub.L. 100-408 [amending subsec. (n)(2) of this section and enacting subsecs. (n)(3), (o)(1)(D) and (E), and (o)(2) of this section] to apply to nuclear incidents occurring before, on, or after Aug. 20, 1988, *but with the amendment by all other sections of Pub.L. 100-408 to apply only with respect to nuclear incidents occurring on or after Aug. 20, 1988*, see section 20 of Pub.L. 100-408, set out as a note under section 2014 of this title.

Pub.L.No. 100-408, §20, 102 Stat. 1066, 1084 (1988) (emphasis added).

> Price-Anderson Act to be part of the relevant federal remedial scheme. By implication, then, the *Silkwood* court concluded that punitive damages were not inconsistent with the Price-Anderson Act.

App. at 23a. Using the original Price-Anderson Act as a backdrop, the district court then reviewed the Amendments Act to determine if any of the amendments implicated a different conclusion and could not find any. The district court noted that §2210(s) of the Amendments Act, limiting punitive damages where the United States is obligated to make indemnification payments on behalf of a particular defendant, has no retroactive application and therefore, "that limit does not govern this case." App. at 24a. The district court concluded that punitive damages remain available under the Amendments Act and denied the Defendants' motion for partial summary judgment.

The court of appeals affirmed the district court's ruling. It recognized that the Amendments Act unambiguously permits an award of punitive damages in this case by holding that, "Plaintiffs argue that the plain meaning of the language of the Amendments Act counsels that punitive damages are available in these actions. We agree." *In re: TMI*, 67 F.3d 1119, 1123 (3d Cir. 1995); App. at 7a. Reaffirming the vitality of this Court's *Silkwood* ruling even after the promulgation of the Amendments Act, the court of appeals opined:

> In view of the sweeping changes effectuated in the Amendments Act, Congress could easily have completely precluded punitive damages in every case arising out of a nuclear incident or precautionary evacuation. However, Congress declined to extend its punitive damages limitation that far.

In re: TMI, 67 F.3d at 1125; App. at 11a.

The court of appeals also rejected the Defendants' arguments that Pennsylvania's laws regarding punitive damages conflicted with the purpose of the Amendments Act. The court

of appeals concluded its reasoning regarding the purported conflict, as follows:

> Because there is no conflict between the Amendments Act and the substantive laws of Pennsylvania which allow punitive damages, we will instruct the district court to proceed with the litigation of these matters in a manner consistent with this opinion.

In re: TMI, 67 F.3d at 1128; App. at 17a. Finding that no error of law occurred, the court of appeals affirmed the district court's ruling denying the Defendants' motion for partial summary judgment.

REASONS FOR DENYING PETITION

This Court should exercise its discretion to deny the Defendants' petition. Nothing stated in the Petition brings this appeal within the criteria enunciated in S.Ct.R. 10(a). Recognizing that there is no inter-circuit conflict and, in fact, that the issue is one of first impression, the Defendants instead contend that this appeal presents an issue of exceptional importance. No other court, including this Court, nor Congress has agreed with the Defendants. Only the Defendants find the question to be of exceptional importance. However, their arguments can not avoid the express language of the statute or the legislative history, both of which conclusively prove that punitive damages are available here.

1. THE PLAIN MEANING OF THE STATUTE PERMITS PUNITIVE DAMAGES

It is axiomatic that when interpreting statutes, the process "begins with the language of the statute itself." *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990). That is also "where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the court is to enforce it according to its terms.' " *United States v. Ron*

Pair Enterprises, Inc., 489 U.S. 235, 241 (1989), *quoting, Caminetti v. United States*, 242 U.S. 470, 485 (1917).

The plain meaning of the Amendments Act conclusively proves that punitive damages are available regardless of what state's law will be used as the rule of decision. Under the Amendments Act, Plaintiffs' claims are now considered "public liability actions." *See TMI II*, 940 F.2d at 857; 42 U.S.C. §2210(n). Public liability actions are defined as "any suit asserting public liability." 42 U.S.C. §2014 (hh).

"Public liability" is also a defined term. It is unambiguously defined as,

> *[A]ny* legal liability arising out of or resulting from a nuclear incident or precautionary evaluation . . . .

42 U.S.C. §2014(w) (emphasis added). Section 2014(w) also identifies excepted claims of legal liability which are not to be considered "public liability." *See* 42 U.S.C. 2014 (i-iii). Significantly, claims for punitive damages are *not* listed as an exception.

Given this broad definition, this Court need only address whether punitive damages are *any* type of legal liability. *In re: TMI*, 67 F.3d at 1123; App. at 8a. Obviously punitive damages are a legal liability as this Court recognized in *United States v. Burke*, 504 U.S. 229, 234-38 (1992), when it held:

> [O]ne of the hallmarks of traditional tort liability is the availability of a broad range of damages [, including] punitive or exemplary damages . . . in those instances where the defendants' misconduct was intentional or reckless.

See also TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993), where this Court upheld a judgment finding legal liability for punitive damages by recognizing as enforceable the judgment of $19,000 in compensatory damages and $10 million in punitive damages; *In re: TMI*, 67 F.3d at 1123; App at 8a (Defendants conceded that punitive damages are a type of legal liability during oral argument before the court of appeals).

Because punitive damages are a form of legal liability, the plain meaning of the Amendments Act is to permit punitive damages.

2. THE LEGISLATIVE HISTORY DOES NOT REVEAL AN INTENT TO PROHIBIT PUNITIVE DAMAGES

The legislative history of the Amendments Act establishes that "Congress decidedly declined the opportunity to expressly eliminate punitive damages." *In re: TMI*, 67 F. 3d at 1126; App. at 13a. What the legislative history reveals is that to reach a compromise, the prohibition of punitive damages awards was withdrawn from the bill and that Congress intended to preserve this Court's ruling in *Silkwood*. *See* H.R. Rep. No. 104, 100th Cong., 1st Sess., pt. 1, at 19 (May 21, 1987), which states:

> The current Act does not expressly state whether a court may award punitive damages in connection with a claim arising out of a nuclear incident. Nor does the Act expressly state whether private financial protection funds or government indemnity funds could be used to pay punitive damages if imposed. In 1984, in *Silkwood v. Kerr-McGee Corporation*, 464 U.S. 238, the U.S. Supreme Court resolved the first of these two issues when it held that the Atomic Energy Act, as amended by the Price-Anderson Act, does not prevent a court from imposing punitive damages under state tort law. The Court did not address the second issue, however, whether private financial protection or government indemnity funds available under the Price-Anderson Act could be used to pay a punitive damage award.
>
> During the 99th Congress, the Subcommittee on Energy and the Environment approved an amendment to H.R. 3653 that would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage

> awards. The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to unlimited liability for punitive damages, thereby undermining one of the primary tenets of the Act. *Accordingly the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue.* Notwithstanding this action the Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries.

Id. (emphasis added).

Silkwood has not been questioned since. *See, e.g., Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 538 n. 4 (1992); *Molzoff v. United States*, 502 U.S. 301, 306 (1992).

Other legislative history reveals that Congress intended to permit punitive damage awards. *See* S.Rep.No. 70, 100th Cong., 1st Sess. 27 (June 12, 1987), *reprinted in* 1988 U.S. Code Cong. & Ad. News 1424, 1440, which states:

> Section 13 prohibits courts from awarding punitive damages under State law in any action that involves a nuclear incident if the action is brought against a Department of Energy Contractor, subcontractor or supplier indemnified under the Price-Anderson Act. The provision insures that the Federal taxpayers will not have to pay punitive damages, consistent with established Federal policy, most forcefully stated in the Federal Tort Claims Act (28 U.S.C. 2674), that punitive damages may not be awarded against the Federal Government.

> *This provision does not preclude the award of punitive damages* against persons, including licensees of the Commission, who are not indemnified by DOE under the Price-Anderson Act. The Committee intends no preference, for or against the awarding of punitive damages in suits against such persons, be inferred from the inclusion of this provision in the bill.

Id. (emphasis added). Thus, the report expressly states that punitive damages are not precluded, provided that their payment is not indemnified by the government. *See also*, S.Rep.No. 218, 100th Cong., 2d Sess. 12-13 *reprinted in* 1988 U.S. Code Cong. & Admin. News 1476, 1487-88.

Given this legislative history, the court of appeals concluded that, "[i]t is hard to imagine more lucid declarations of Congressional intent [to permit punitive damage awards], and we will not judicially amend this statute or subvert the policy of the legislation by adopting defendants' arguments to the contrary." *In re: TMI*, 67 F.3d at 1127; App. at 14a.

* * *

Congress, this Court, the court of appeals and the district court have all found that state law, consistent with the Amendments Act, permits punitive damages for cases like this one. Although Defendants advert to the existence of a question of exceptional importance, none exists. Moreover, the delays inherent in any appeal weigh against granting the petition as likely to upset the calendared June 1996 trial date, at the end of which the jury may simply decline any award of punitive damages.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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